Town of Brookline
Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2017-0026
MB&T REALTY, LLC
26 FERNWOOD ROAD, BROOKLINE, MA

Petitioner, MB&T Realty, LLC applied to the Building Commissioner for permission to construct a new single-family home. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the property affected was that shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed June 1, 2017 at 7:10 p.m. in the Selectmen's Hearing Room as the date, time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioner, to their attorney (if any) of record, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published on May 18, 2017 and May 25, 2017 in the Brookline Tab, a newspaper published in Brookline. A copy of said notice is as follows:

Notice of Hearing

Pursuant to M.G.L., C. 40A, the Board of Appeals will conduct a public hearing at Town Hall, 333 Washington Street, Brookline, on a proposal at: 26 FERNWOOD ROAD – *Construct a new single-family dwelling* in a S-40 (Single-Family) Residence District, on June 1, 2017 at 7:10 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: MB&T Realty, LLC) *Precinct 14*

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law, and any additional zoning relief the Board deems necessary:

1. **Section 5.09.2.n: Design Review**
2. **Any additional relief the Board may find necessary**

Hearings may be continued by the Chair to a date/time certain, with no further notice to abutters or in the TAB. Questions about hearing schedules may be directed to the Planning and Community Development Department at 617-730-2130, or by checking the Town meeting calendar at: www.brooklinema.gov.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to Lloyd Gellineau, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone (617) 730-2328; TDD (617) 730-2327; or e-mail at llgellineau@brooklinema.gov

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At the time and place specified in the notice, the Zoning Board of Appeals held a public hearing. Present at the hearing was Chairman Mark G. Zuroff and Board Members Kate Poverman and Lark Palermo. Also present at the hearing was Planner and Zoning Coordinator, Ashley Clark. The case was presented by the attorney for the Petitioner, Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445.

Chairman Zuroff called the hearing to order at 7:10 pm. Attorney Allen waived the reading of the public hearing notice.

Attorney Allen stated that the property is located in a S-40 District. Attorney Allen stated that 26 Fernwood Rd. was originally created through a subdivision which created 26 Fernwood Road, 28 Fernwood Road, and 181 Clyde Street. Attorney Allen stated that 26 Fernwood Rd. is an interior lot, insulated in a manner in which, aside from the driveway opening, is undetectable from the street.

Attorney Allen stated that the Petitioner submitted the instant proposal to the Engineering Department in 2016, however, unique water conditions on the site delayed construction. Attorney Allen stated that an at-risk permit was issued in November 2016.

Attorney Allen argued that the massing, scale, footprint, and height of the proposed home are not substantially greater than, and that the setbacks of the home are not substantially less than, those of abutting structures and of other structures conforming to the zoning by-law on similarly sized lots in the neighborhood. He stated that the proposal does not alter the streetscape and the significant front yard setback allows the Petitioner to preserve a majority of existing trees.

Attorney Allen then reviewed the standards of a special permit set forth in **Section 9.05** of the Zoning By-Law. Attorney Allen argued: (1) the specific site is an appropriate location for the proposed use because the proposed home, like the prior home, will be a single-family dwelling; (2) the use will not adversely affect the neighborhood because the neighborhood consists of similarly constructed homes; (3) there will be no nuisance or serious hazard to vehicles or pedestrians because the proposed driveway is similar to the previous driveway and allows vehicles to turn around on the property and exit onto the street without having to back into the street; (4) adequate and appropriate facilities will be provided for the proper operation and proposed use; and (5) there will be no effect on the supply of housing available for low and moderate income people.

Chairman Zuroff asked whether anyone wanted to speak in favor of the proposal. No one spoke in favor of the proposal.

Chairman Zuroff asked whether anyone wanted to speak in opposition to the proposal. No one spoke in opposition to the proposal.

Ms. Clark then delivered the findings for the Planning Board:

FINDINGS
Section 5.09.2. n

n. any construction of newly created space, whether or not habitable, finished or built out, where such space substantially satisfies the requirements for habitability under the State Building Code or could with the addition of windows or doors and without other significant alterations to the exterior of the building be modified to substantially meet such habitability requirements, and which space if finished or built out or converted to habitable space would result in the total Gross Floor Area of the structure being greater than the permitted Gross Floor Area in Table 5.01. In granting any such special permit, the Board of Appeals, in addition to the requirements of §5.09 and §§9.03 to 9.05, shall be required to find that the massing, scale, footprint, and height of the building are not substantially greater than, and that the setbacks of the building are not substantially less than, those of abutting structures and of other structures conforming to the zoning by-law on similarly sized lots in the neighborhood. **In granting a special permit for construction of such non-habitable space, the Board of Appeals shall set forth as a condition of the special permit the extent to which such space may or may not be converted to habitable space in the future pursuant to Section 5.22 or otherwise, with the allowed future conversion to habitable space no greater than the applicant's representation of the intended amount of future conversion.**

Floor Area	Allowed	Proposed*	All Possible GFA**	Finding
Floor Area Ratio	.20	.198	.38	**Special Permit under Section 5.09.2. n**
Floor Area (s.f.)	6,005	5,974	11,537	

*Includes the first and second floors
**Includes basement (less mechanical space), first floor, second floor and attic space

Section 5.09.4 – Design Standards

The most relevant sections of the design review standards are described below:

a. Preservation of Trees and Landscape – The applicant is proposing to remove (4) of the existing trees due to the width of the new proposed house. The Applicant has stated there will be significant efforts to minimize tree and soil removal as well as provide significant planting and screening.

b. Relation of Buildings to Environment – "Proposed development shall be related harmoniously to the terrain, trees, landscape and natural features." The Applicant has stated that the proposal matches existing setback conditions in the neighborhood. The proposal meets the setback requirements per table 5.01 of the Zoning By-law.

c. Relation of Buildings to the Form of the Streetscape and Neighborhood –The proposed home meets all the setback requirements and the front yard setback will remain approximately the same as the previous house (approximately 60 feet). The width of the proposed home is adding approximately 6 feet of width to the street view; the existing home is 71' and the proposed 78'.

d. Open Space- The lot coverage of the proposed structure is approximately 1,150 SF larger than the existing home which has an impact on the open space available. The lot however is quite large, about 5,000 SF greater than the minimum lot size required and there is plenty of open space to meet requirements for open space under the Zoning By-law.

e. Circulation- The proposed driveway entrance and exit allows vehicles to turn around on the property and exit onto the street without having to back into the street.

f. Storm Water Drainage- the site plan submitted provides (1) area for storm water retainage, which is an improvement to the existing conditions which does not provide any storm water management.

g. Utility Service- Utilities will be underground.

h. Energy Efficiency- The applicant has stated that they will be using energy-efficient technology and renewable energy resources and that the structure has been designed in accordance with Massachusetts stretch energy and meets or exceeds their requirements. The Applicant has stated this design will allow the proposed house will reduce energy consumption when compared to the existing structure

Ms. Clark stated that the Planning Board is supportive of this proposal and has determined through a neighborhood analysis that the massing, scale, footprint, and height of the proposed single-family home are not substantially greater than those of abutting structures. She stated that the Planning Board noted that the Applicant has submitted letters of support from abutters. Ms. Clark indicated that the Planning Board rendered the setbacks, massing and scaling to be consistent with the surrounding properties which vary in size and design. Therefore, the Planning Board recommended approval of the site plan by Verne Porter, Land Surveyor, dated 12/23/16, and the architectural plans by Ronald F. Jarek, dated 09/20/2016 with revisions dated 1/30/2017, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit (3) 11x17 sets of final site plans, floor plans and elevations, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. The conversion of any non-habitable space in the future, must comply with §5.22 of the Zoning By-law, or appropriate by-law regulating FAR, in addition to other relevant sections of the By-law.

3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final floor plans and elevations stamped and signed by a registered architect or engineer; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Ms. Clark then delivered the recommendation of the Building Department. Ms. Clark stated that the Building Department has no objection to the relief requested. Therefore, should relief be granted, the Building Department will work with the Petitioner to ensure compliance.

The Board then deliberated on the merits of a special permit as requested. Chairman Zuroff stated that the proposal is worthy of relief and that the proposed home is consistent with what exists in the neighborhood. Board Member Poverman and Board Member Palermo concurred.

The Board then determined, by unanimous vote that the requirements for a special permit under **Sections 5.09.2.n** of the Zoning By-Law pursuant to **Section 9.05** of the Zoning By-Law were met. The Board made the following specific findings pursuant to said **Section 9.05**:

a. The specific site is an appropriate location for such a use, structure, or condition.

b. The use as developed will not adversely affect the neighborhood.

c. There will be no nuisance or serious hazard to vehicles or pedestrians.

d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

e. Development will not have any effect on the supply of housing available for low and moderate-income people.

Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit (3) 11x17 sets of

final site plans, floor plans and elevations, subject to the review and approval of the Assistant Director of Regulatory Planning.

2. The conversion of any non-habitable space in the future, must comply with §5.22 of the Zoning By-law, or appropriate by-law regulating FAR, in addition to other relevant sections of the By-law.

3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final floor plans and elevations stamped and signed by a registered architect or engineer; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals

Mark G. Zuroff, Chairman

Filing Date: 6-9-17

A True Copy
ATTEST:

Patrick J. Ward
Clerk, Board of Appeal